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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED: 04/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Examiner's Answer

1. This is in response to the brief on appeal filed January 11, 2002.

2. **(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

3. **(2) Related Appeals and Interferences**

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief;

4. **(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

This appeal involves claims 3, 4, 7, 10-13, 16 and 17.

Claims 1, 2, 5, 6, 8, 9, 14 and 15 have been canceled.

5. **(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

No amendment after final has been filed.

6. **(5) Summary of Invention**

The summary of invention contained in the brief is correct.

7. **(6) Issues**

The appellant's statement of the issues in the brief is correct.

8. **(7) Grouping of Claims**

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**APR 30 2002**  
**GROUP 1700**

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The rejection of claims 3, 4, 7, 10-13, 16 and 17 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

8. **(7) Grouping of Claims**

The rejection of claims 3, 4, 7, 10-13, 16 and 17 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

9. **(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

10. **(9) Prior Art of Record**

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

Giese, James	"Developing Low-Fat Meat Products"	
<u>Food Technology</u>	April 1992, pages 100-108	
5,164,213	Bonkowski	11-1992
3,309,204	Helmer et al	03-1967

11. **(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 3, 4, 7, 10-13, 16 and 17 stand rejected under 35 USC 103(a) being unpatentable over Giese. Giese discloses low-fat ground meat products, having less than half of the fat of conventional meat products, containing 2% soy protein isolate, and soybean oil which partially replaces beef fat and lowers plasma cholesterol (pages

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100, 103 and Table 1). The fatty acids claimed in claim 4 are naturally present in soybean oil. Finding the optimum amount and ratio of vegetable oil, animal fat and soybean protein to be included in the meat products would require nothing more than routine experimentation by one reasonably skilled in this art.

Claims 3, 4, 7, 10-13, 16 and 17 also stand rejected under 35 USC 103(a) as being unpatentable over Bonkowski in view of Helmer et al. Bonkowski discloses low fat, ground meat products containing about 4% soy protein isolate and possessing cholesterol-lowering properties. It would have been obvious to replace part of the animal fat in Bonkowski's meat products with soybean oil since soybean oil is conventionally used as an animal fat replacer in meat products, e.g. sausage products, as evidenced by Helmer et al (col. 5, lines 44-60).

Finding the optimum amount and ratio of vegetable oil, animal fat and soybean protein to be included in the meat products would require nothing more than routine experimentation by one reasonably skilled in this art.

## 12. **(11) Response to Argument**

Appellant's comments regarding Giese are without merit. Although animal fat provides better flavor and texture to meat products than vegetable oil, as appellant contends, the substitution of vegetable oil for animal fat in ground beef products is recognized by Giese for lowering cholesterol and improving nutritional content. In order to achieve these advantages of both animal fat and vegetable oil in ground meat products, the skilled artisan would obviously know how to adjust or balance the contents

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of each of these components to provide the most ideal meat product and to achieve consumer acceptance.

Appellant's arguments with regard to Bonkowski and Helmer et al are equally unconvincing. By substituting vegetable oil for part of the animal fat in the meat product of Bonkowski, as suggested by Helmer et al, to prevent fat caps and emulsion breakdown (col. 5, lines 34-48 of Helmer et al) improvement in plasma-cholesterol levels in consumers of these products will naturally occur. Moreover, the law of obviousness does not require that references be combined for the reasons contemplated by the inventor, but rather only looks to whether some motivation or suggestion to combine references is provided by the prior art taken as a whole (In re Beattie, 24 USPQ 2d 1040).

Finally, although Test variable 1 in Tables 6 and 7 of appellant's spec. shows improved cholesterol lowering results as compared with Test variables 2 and 3 in said Tables 6 and 7, as appellant argues, neither Test variable 2 nor Test variable 3 includes soy protein, as claimed by appellant and disclosed by both primary references. Moreover, neither Test variable 2 nor Test variable 3 includes both animal fat and vegetable oil, regardless of the content of each, as disclosed in Giese. Thus, there is no factual evidence of record to support appellant's conclusion that equal amounts of animal fat and vegetable oil are critical since there are no tests of record showing cholesterol results where different contents of animal fat and vegetable oil are used in meat products. What cholesterol results would occur in a meat product containing soy protein and different contents of animal fat and vegetable oil?

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13. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

A. Corbin  
March 8, 2002

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can normally be reached on Tuesday thru Friday 10:00 a.m. to 7:30 p.m. and alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3929. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 305-6078 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

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A. Corbin/dh

March 8, 2002